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REMARKS**1. Application Status**

Applicant appreciates the Examiner's acknowledgement of Applicant's response to the Office Action with a mail date of July 16, 2009 that was filed with the United States Patent and Trademark Office on January 19, 2010. Applicant also appreciates the Examiner's acknowledgement of the Affidavit that accompanied this response.

2. Claim Disposition

Applicant also appreciates the Examiner's acknowledgement that Claims 1-13 and 17-20 are currently pending in this application.

3. Rejection of claims 1-13 and 17-20 under 35 U.S.C. 112, first paragraph

The Examiner has rejected claims 1-13 and 17-20 under 35 U.S.C. 112, first paragraph for the reasons of record. Specifically, the Examiner states that the referenced claims are not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Solely to advance prosecution and without prejudice or disclaimer of the subject matter therein, Applicant has amended claims 1 and 18. Applicant specifically reserves the right to file one or more divisionals on the original subject matter. Support for such amendments may be found in paragraphs 39-44, 49 and 54.

In light of the amendments made to claims 1 and 18, Applicant respectfully requests withdrawal of the rejections against 1-13 and 17-20 under 35 U.S.C. 112, first paragraph.

4. Rejection of claim 3 under 35 U.S.C. 112, second paragraph

The Examiner has rejected claim 3 for the reasons of record.

Solely to advance prosecution and without prejudice or disclaimer of the subject matter therein, Applicant has cancelled claim 3 and specifically reserves the right to file one or more divisional applications on the original subject matter. The Applicant respectfully directs the Examiner's attention to the remarks above and claim amendments attached to this Response. In light of the same, Applicant respectfully requests withdrawal of the rejections of record against claims 1-13 and 17-20 under 35 U.S.C. 112.

5. Rejection of claims 1-11 under 35 U.S.C. 102(e)

The Examiner states that claims 1-11 are rejected under 35 U.S.C. 102(e) as anticipated by Lewis et al. (U.S. Patent No. 6,706,289). Applicant previously had submitted a Declaration signed by Dr. Paul Schmidt, an inventor in this pending application, stating that the subject matter of the disclosures in the Lewis Patent (U.S. Patent No. 6,706,289) referenced in the Office Action on page 8 were derived from Dr. Schmidt. Since that time, Mr. Kenneth Hinds has been located and has been questioned in regards to this matter. Additionally, Dr. Schmidt was again interviewed and agrees that Dr. Hinds is also an inventor of the referenced subject matter.

Applicant appreciates the Examiner's patience with this matter as a recent bankruptcy filing has caused changes in the employment status of both Dr. Schmidt and Dr. Hinds. In light of recently locating Dr. Hinds, it has been determined that he was also an inventor of the referenced subject matter and this was confirmed by Dr. Schmidt. As such, the subject matter of the disclosure was derived from two inventors of this pending application (Schmidt and Hinds) and not another (Lewis, Schmidt and Hinds – inventors of the 6,706,289 Patent).

In light of the above remarks and attached Declaration, Applicant respectfully requests the rejections of record against claims 1-11 under 35 U.S.C. 102(e) be withdrawn.

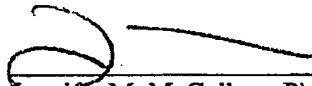
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Concluding Remarks

In view of the foregoing remarks, Applicant respectfully requests reconsideration and examination as to the merits of the application. If the Examiner notes any further matters which would be expedited by a telephonic interview, she is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

Respectfully Submitted,

October 14, 2010
Date



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